

EXHIBIT A

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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 UNITED STATES OF AMERICA,

New York, N.Y.

4 v.

21 Cr. 489 (JPC)

5 RALPH SCURLOCK,

6 Defendant.

7 -----x

8 August 16, 2021
9 3:05 p.m.

10 Before:

11 HON. JOHN P. CRONAN,

12 U.S. District Judge

13
14 APPEARANCES

15 AUDREY STRAUSS

16 United States Attorney for the
17 Southern District of New York

BY: JANE CHONG

Assistant United States Attorney

18 FEDERAL DEFENDERS OF NEW YORK

Attorneys for Defendant

19 BY: SYLVIE J. LEVINE

20 ALSO PRESENT: FRANCESCA PIPERATO, Pretrial Services

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(Case called)

THE DEPUTY CLERK: Counsel, starting with the government, please state your name for the record.

MS. CHONG: Good afternoon, your Honor. Jane Chong for the government.

THE COURT: Good afternoon, Ms. Chong.

MS. LEVINE: Good afternoon. Federal Defenders of New York by Sylvie Levine on behalf of Mr. Scurlock.

THE COURT: Good afternoon, Ms. Levine.

And I believe pretrial services is also present?

OFFICER PIPERATO: Good afternoon, your Honor. Francesca Piperato with Pretrial Services.

THE COURT: I apologize. With the mask it is sometimes hard. Officer, your last name?

OFFICER PIPERATO: Piperato.

THE COURT: Good afternoon, everyone. Good afternoon, Mr. Scurlock.

We are here for Mr. Scurlock's arraignment and his initial pretrial conference. I also understand, Ms. Levine, you will be making a bail application?

MS. LEVINE: Yes, please, your Honor.

THE COURT: I will address that application toward the end of the proceeding.

Before we turn to the defendant's arraignment, I think it would make sense for me to initially put on the record, as I

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1 believe I have in part before with Ms. Levine, my prior work
2 before taking the bench, before I became a federal judge about
3 a year ago I worked at the Department of Justice. I was a
4 prosecutor at the U.S. Attorney's office for the Southern
5 District of New York, which is Ms. Chong's office, until August
6 2017, and then I worked at the Department of Justice's criminal
7 division in Washington, D.C. until early August 2020 when I was
8 confirmed in my current job.

9 The complaint and the indictment were of course filed
10 after I left the Department of Justice but the charge alleges
11 the illegal possession of a firearm on July 4, 2019, at which
12 point I was still with the Criminal Division. With that said,
13 I have reviewed the complaint and indictment and I am aware of
14 no involvement that I had in this, in any investigation related
15 to this case while I was at the Department of Justice such as
16 my authorizing any investigative techniques or consulting or
17 approving any charging decision.

18 Ms. Chong, is that your understanding as well?

19 MS. CHONG: Yes, your Honor.

20 THE COURT: And there are no Title III wires in this
21 case, I take it?

22 MS. CHONG: No, your Honor.

23 THE COURT: Ms. Levine, I also note that Ms. Chong was
24 a summer intern of mine at the U.S. Attorney's office some time
25 ago. Your memory is probably better than mine, Ms. Chong, I

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1 believe about eight or nine years ago. She was an excellent
2 intern, we stayed in contact over the years. I think I may
3 have served as a reference at some point but I have no
4 information or knowledge about this case aside from what I have
5 read in the complaint and the indictment and, Ms. Levine, I
6 don't believe we had any cases when I was at the U.S.
7 Attorney's office. I'm not a hundred percent sure about that.

8 MS. LEVINE: I don't think we did, your Honor.

9 THE COURT: I don't see any reason why I should not
10 preside over this case but if any party thinks otherwise, I ask
11 that you make an application or motion within two weeks so we
12 assure to keep this case moving on track for a timely
13 resolution.

14 So, let me just start with you, Ms. Chong. Can you
15 tell me a little bit more about when and where the defendant
16 came into federal custody?

17 MS. CHONG: Yes, your Honor. The defendant, he was
18 initially charged in May, he was arrested in the district of
19 Maine on July 22nd, around 2:30 p.m., and he arrived in the
20 Southern District of New York after being transferred by the
21 U.S. Marshals on August 11th at approximately 5:00 p.m.

22 THE COURT: And, in terms of Mr. Scurlock's arrest in
23 Maine, was he at liberty or at transfer from state custody.

24 MS. CHONG: He was at liberty when he was arrested and
25 he was detained in the District of Maine.

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1 THE COURT: And, Ms. Levine, I understand that when
2 Mr. Scurlock arrived in this district he was detained on this
3 without prejudice to an application?

4 MS. LEVINE: Yes, your Honor; on Thursday.

5 THE COURT: So, let's turn to Mr. Scurlock's
6 arraignment.

7 Mr. Scurlock, have you received a copy of the
8 indictment in this case?

9 THE DEFENDANT: Yes.

10 THE COURT: And Ms. Levine, have you been able to
11 review that indictment with your client?

12 MS. LEVINE: I have, your Honor.

13 THE COURT: Mr. Scurlock, you are charged in the
14 indictment in one count. That count charges that, on July 4,
15 2019, knowing that you previously had been convicted of a
16 felony, you knowingly possessed a firearm that was in and
17 affecting commerce and, in particular, the firearm was a .25
18 caliber semi-automatic Phoenix Arms pistol. The indictment
19 also contains a forfeiture allegation.

20 Do you wish me to read it to you or do you waive its
21 public reading?

22 THE DEFENDANT: I waive.

23 THE COURT: You waive you said?

24 THE DEFENDANT: Yes.

25 THE COURT: And have you been able to discuss the

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1 indictment with Ms. Levine?

2 THE DEFENDANT: Yes.

3 THE COURT: Ms. Levine, do you wish to enter a plea on
4 behalf of your client?

5 MS. LEVINE: At this time we plead not guilty.

6 THE COURT: And I will enter that not guilty plea for
7 Mr. Scurlock.

8 Let me go back to the government. Ms. Chong, can you
9 give me an overview of -- I think from the complaint I have a
10 good sense of the alleged conduct but the government's proof in
11 this matter would be discovery that you expect to be produced
12 and the timeline for production of that discovery?

13 MS. CHONG: Yes, your Honor.

14 As to the evidence in this case, your Honor, the
15 government can proffer that it has the following: Surveillance
16 footage and cell phone footage which shows an individual
17 shooting the victim on a public street and then engaging in a
18 physical fight. There was also a phone that appears to have
19 been recovered from the scene by a witness on the scene. On
20 that phone are photographs of the defendant wearing clothing
21 that appears to match the clothing of the shooter. Also on the
22 phone are photos that match the firearm in this case, the black
23 Phoenix Arms pistol. The government also has the firearm
24 itself recovered from the garbage nearby and a LAN report of
25 the firearm showing a DNA match for the defendant.

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1 As to discovery in this case, your Honor, it will
2 consist primarily of the items I described. The government
3 also, as to timeline, requests two weeks for rolling discovery.

4 THE COURT: Ms. Levine, does that timeline work on
5 your end?

6 MS. LEVINE: Yes, your Honor. That's fine.

7 THE COURT: On the topic of the government's
8 disclosure obligations, and Judge Moses may have covered this
9 at the presentment, from reviewing the docket I think it is
10 important for me to address it as well. I note that in late
11 October the former president signed into law the Due Process
12 Protections Act. That statute has provisions that amend Rule 5
13 of the Federal Rules of Criminal Procedure such that Rule 5(f)
14 requires me to remind the parties of the prosecutor's
15 obligations under Supreme Court's decision in *Brady v.*
16 *Maryland*. Pursuant to that statute and Rule 5(f), I direct the
17 prosecution to comply with its obligation under *Brady v.*
18 *Maryland* and that case's progeny, to disclose to the defense
19 all information, whether admissible or not, that is favorable
20 to the defendant, material to either guilt or to punishment,
21 and known to the prosecution. Possible consequences for
22 non-compliance may include dismissal of individual charges or
23 the entire case, exclusion of evidence, professional
24 discipline, court sanctions for the attorney or the attorneys
25 responsible. After this proceeding I will enter, on the

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1 docket, a written order more fully describing that obligation
2 and the possible consequences of failing to meet it.

3 Ms.Chong, I direct the prosecution to review and
4 comply with that order, but for now, does the prosecution
5 confirm that it understands its obligations and that it will
6 fulfill them?

7 MS. CHONG: Yes, your Honor.

8 THE COURT: Ms. Levine, based on the government's
9 description of the discovery, how much time do you think you
10 will need to review discovery with a view on any motions you
11 may wish to file?

12 MS. LEVINE: I think approximately 30 days. If
13 Mr. Scurlock remains in custody that will be harder
14 logistically, but I would aim for 30 days and if I needed more
15 time I can always apply to the Court.

16 THE COURT: We will address the bail argument in a
17 moment. Assuming for now that Mr. Scurlock remains remanded,
18 we will remain in a position where I can't set a firm date and
19 time right now but we will -- do you think the week of
20 September 13th would be enough time or would you rather have
21 the following week?

22 MS. LEVINE: That week is fine.

23 THE COURT: So, we will plan on a status conference
24 the week of September 13th. At that conference, Ms. Levine, I
25 will ask about the status of your review of discovery with your

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1 client and whether you anticipate filing any motions, and I
2 will be reasonable on that date if there are challenges in
3 reviewing discovery in determining whether motions should be
4 filed. Depending on where we are that week I may set a trial
5 date. We should have still plenty of time to request a trial
6 date in early 2022 if that's what we are looking at. Of
7 course, if a disposition is reached before that, you should
8 reach out to Ms. Henrich and we will scheduling any pleading.

9 Mr. Scurlock, I also want to note one thing. I advise
10 all criminal defendants at their first appearance before me, it
11 is nothing specific to you, nothing specific to Ms. Levine,
12 that if for whatever reason circumstances arise that you want
13 to change counsel or you need to change counsel, maybe you
14 might retain counsel or just wanted to appoint new counsel, it
15 is very important that you raise that as soon as possible. A
16 lawyer needs enough time to prepare a case, to review
17 discovery, and maybe as early as the next conference I'm going
18 to set a trial date, and when I do so that date is unlikely to
19 change absent very compelling reasons. You are very fortunate
20 to have an excellent, experienced attorney in Ms. Levine, but I
21 tell you if you want to change counsel, it is in your interest
22 to raise that as early as possible.

23 Before we turn to the issue of bail, is there an
24 application from the government?

25 MS. CHONG: Yes, your Honor. The government seeks

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1 detention on the basis of flight risk and danger to community.

2 THE COURT: Ms. Levine, do you wish to make a bail
3 argument?

4 MS. LEVINE: Yes, please.

5 THE COURT: Go ahead.

6 MS. LEVINE: So, your Honor, we are proposing a robust
7 bail package and together it is a combination of conditions
8 that is sufficient under the Bail Reform Act to ensure the
9 safety of the community and Mr. Scurlock's return to Court.

10 First I would ask your Honor to look for a moment or
11 to consider the timeline of this case. The allegations in this
12 case stem from an incident on July the 4th of 2019 and the
13 criminal complaint was not sworn out until May of 2021. That's
14 almost two years in which neither the feds in the Southern
15 District of New York nor the state, nor did any New York State
16 district attorney's office charge Mr. Scurlock. Your Honor
17 knows from your experience that when cases are being
18 investigated by the NYPD there are task forces, there are joint
19 federal and state investigators, particularly with regard to
20 gun crimes, and if either prosecuting body, either the state or
21 the feds, had sufficient information even to make out probable
22 cause, we would have seen Mr. Scurlock here a long time ago
23 and, for better or worse, that two-year gap tells me, with the
24 limited information I of course have at this early stage, that
25 the evidence cannot possibly be as clear cut or as simple as

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1 the government will probably pitch it to you as.

2 In a case with videos and witnesses that are described
3 in the criminal complaint, if those people could readily -- if
4 those items readily identify Mr. Scurlock, like I said, it
5 belies the two-year delay.

6 And then of course I think most telling for me in
7 reading the criminal complaint is that language about a DNA
8 match. And while, of course, if in fact that turns out to be
9 true, that's good evidence for the government but I am really
10 wary of the word "match." We know scientifically that the
11 OCME, that's not generally the language that the Office of the
12 Chief Medical Examiner uses in this district and it will
13 certainly be an important part of our review process to
14 determine what exactly they mean and that, of course, is a
15 question of fact. Where on the gun was the DNA? I think it's
16 clear from even the face of the complaint that perhaps both the
17 victim and the shooter, and perhaps others, touched the weapon.
18 And, of course, as a matter of science, which is what does
19 "match" mean. I think there is not a criminalist in this
20 district that I have ever come across that uses the word
21 "match" and I was, frankly, surprised to see it written in a
22 sworn criminal complaint and I think it begs the question or it
23 begs additional evidence as to what the quality of that
24 evidence is.

25 Look. These are big, open questions that the

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1 discovery will shed a lot of light on and of course the
2 government has seen it and I have not, but as the Court well
3 knows, that's not the question today. We are not here to do
4 the trial, we are not here on a motion, we are here to
5 determine are there conditions that can be fashioned, and under
6 3142 of course that combination requires, one, the presumption
7 of innocence; and two, the presumption of release. This is a
8 case where release is presumed unless the government can meet
9 their burden otherwise. And so, I'm proposing a package for a
10 person who is a United States citizen, who has never had a U.S.
11 passport, who in the two years since this case allegedly took
12 place, didn't flee the country, he was arrested in this country
13 having never possessed a passport, and for a person whose last
14 criminal conviction is a decade old. His last criminal
15 conviction, according to the Pretrial Services report, was from
16 2011 and before, and those convictions are so old that
17 Mr. Scurlock is not currently on probation or parole and he was
18 not on probation or parole at the time that this offense is
19 alleged to have occurred. And, of course, the age of those
20 convictions will make a big difference in his guidelines
21 calculation in a case where despite, of course, the severity of
22 the charges which I am not disputing, it is also undisputed or
23 indisputable that this case comes with no mandatory minimum
24 whatsoever.

25 So, the conditions I propose are as follows: We

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1 propose a \$50,000 personal recognizance bond co-signed by three
2 financially responsible persons. Since Thursday my office has
3 been working quickly to get in touch with Mr. Scurlock's family
4 and put together this package and we have three people that we
5 think are viable co-signers. And that kind of family support
6 is exactly the kind of condition that judges in this district
7 use to determine, can I put together a bail package? And three
8 co-signers is exactly that.

9 And, on top of that, we are suggesting that the Court
10 impose a condition of home detention with electronic
11 monitoring. That would mean that Mr. Scurlock is released with
12 an ankle bracelet that will keep him at home unless and until
13 pretrial services were to authorize him to leave and even if
14 they were to do so, it would be for the kind of activities that
15 the Court endorses -- meetings with his lawyer, meetings with
16 Pretrial Services, the doctor, or employment should he obtain.

17 Those conditions, your Honor, coupled with pretrial
18 supervision, coupled with the mandatory drug testing condition,
19 coupled with travel restrictions, all of those things together
20 are really all the tools we have at our disposal and they're
21 appropriate here but put all together, your Honor, I believe
22 that they meet the standard set forth by 3142. Mr. Scurlock
23 would wear that bracelet at his family home, it was a home
24 owned by his foster parents and now it's in the name of his
25 brothers, he has lived there for 20-some-odd years. And, it is

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1 here in the Southern District of New York and that is a place
2 where, of course, Pretrial Services could monitor him.

3 So, for all of those reasons -- and of course I am
4 happy to answer any questions the Court has -- but given the
5 presumption of release and the robust package we have put
6 forth, we think that release is appropriate under 18 U.S.C.
7 3142.

8 THE COURT: Ms. Chong?

9 MS. CHONG: Your Honor, first, as to the charging
10 timeline, of course the federal government can't speak to the
11 NYPD's time line for referring cases to our office, but I can
12 assure the Court that when we received that referral earlier
13 this year, in 2021, we worked with all due speed to thoroughly
14 and timely investigate the case. In any event, nothing about
15 the timeline undermines the defendant's dangerous as reflected
16 in the facts in the alleged complaint which I think do speak
17 because for themselves. Because of those facts, the government
18 agrees with pretrial services assessment that no condition or
19 combination of conditions will reasonably assure the safety of
20 the community or, in this case, the defendant's appearance.

21 First, the nature and circumstances of the offense
22 make clear the danger the defendant poses. The defendant here
23 did not merely unlawfully possess a loaded firearm, which is
24 itself a serious crime. As alleged in the complaint, the
25 defendant actually shot someone on a public street populated by

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1 people who were gathered there for July 4th. As described in
2 the complaint, the evidence is extensive. The government
3 proffers that in addition to the firearm itself -- and
4 questions and disputes about the DNA match aside -- the
5 government has surveillance and cell phone footage of the
6 shooting. There you can see the shooter is wearing distinctive
7 red, blue and white clothing that matches clothing worn by
8 defendant in photographs of the defendant from a phone which we
9 believe the defendant left behind on the scene and was
10 recovered from a witness who indicated he was on the scene.
11 Also on that phone, as indicated earlier in this proceeding,
12 are photographs that match the firearm in this case, a black
13 Phoenix Arms pistol.

14 As reflected in the Pretrial Services report, the
15 defendant does have a criminal history that the government
16 believes suggests he poses a danger. It reflects convictions
17 for grand larceny and attempted robbery.

18 The government would also like to emphasize that the
19 preponderance of the evidence also supports the defendant's
20 future non-appearance. The defendant has actively evaded law
21 enforcement since the arrest warrant was issued in May. Based
22 on my conversations with NYPD, it appears that when law
23 enforcement went to the address on file for the defendant, an
24 individual who identified himself as Mr. Scurlock's brother and
25 house mate, provided the detective Mr. Scurlock's phone number

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1 and also called Mr. Scurlock right there on the scene. A
2 detective then actually spoke to Mr. Scurlock and indicated
3 that an arrest warrant had been issued and Mr. Scurlock
4 responded that he would not be turning himself in. He was
5 eventually tracked to a suspected drug house in Maine and
6 arrested.

7 I note that Mr. Scurlock is also currently facing a
8 drug trafficking charge in Maine state court and had an
9 in-person court appearance scheduled for July 1st. I spoke
10 with the Maine AG's office today and they confirmed
11 Mr. Scurlock did not appear.

12 In light of the danger the defendant poses and his
13 very likely non-appearance, the government respectfully
14 requests that he be detained.

15 THE COURT: I have read the pretrial services report
16 but let me just check also with Officer Piperato. Is there
17 anything further you wish to add?

18 OFFICER PIPERATO: No. Pretrial services, our
19 position remains the same as listed in the initial bail report.

20 THE COURT: So, let me start, unless there is anything
21 further, Ms. Levine, you wish to add.

22 MS. LEVINE: No, your Honor. I think for the most
23 part would I rest on the record I previously made. I think
24 some of the facts posed by the government at the end are things
25 not reflected in the Pretrial Services report. There does not

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1 appear to be an active warrant according to the record I am
2 looking at, for example, and, you know, this is all to say many
3 of these things, many of these questions will be answered.
4 There will come a time when Mr. Scurlock and I will either be
5 presenting facts to a jury or admitting guilt, as happens in
6 every case but, again, that does not foreclose the issue we are
7 here discussing which is whether or not conditions can be set
8 in the meantime.

9 THE COURT: Ms. Chong, can you say anything more about
10 the DNA match?

11 MS. CHONG: Your Honor, I can say that we have a
12 complete file from OCME and that I agree with defense counsel
13 that questions of whether it constitutes a match will be
14 litigated later, but I will say that we have a report that
15 indicates, I believe it is a 98 percent likelihood. But I
16 would have to go back and check my facts on that but our
17 indication is that that constitutes a DNA hit.

18 THE COURT: Let me start with the relevant standards
19 under the Bail Reform Act. In determining whether a defendant
20 should be detained pending trial, the question is whether there
21 is a condition or combination of conditions that would
22 reasonably assure the appearance of the person as required and
23 the safety of any other person in the community.

24 I have considered the factors under 18, U.S. Code
25 3142(g). Those are the nature and circumstances of the charged

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1 offense, the weight of the evidence against the defendant, the
2 history and the characteristics of the defendant, and the
3 nature and seriousness of the danger to any person or the
4 community that would be posed by the defendant's release. Also
5 has been mentioned a review of the Pretrial Services report
6 which was prepared after Pretrial Services interviewed
7 Mr. Scurlock on August 12th, 2021.

8 I will deny Mr. Scurlock's bail application. If facts
9 change such as appropriate to make a renewed application,
10 Ms. Levine of course is welcome to do so. It goes without
11 saying that Mr. Scurlock is presumed innocent and he remains so
12 until and if proven guilty but it is relevant for me to
13 consider the nature and circumstances of the charged offense
14 and here that weighs strongly in favor of the detention on
15 danger to the community grounds.

16 Mr. Scurlock is charged with possessing a firearm
17 after a prior felony conviction and the complaint alleges
18 circumstances that he arrived to that possession including, on
19 July 4th, 2019, Mr. Scurlock allegedly approaching a physical
20 altercation between two men in the Bronx, the third man was
21 allegedly watching that fight and Mr. Scurlock is alleged to
22 have approached that person and shot him with a firearm. After
23 that shooting there allegedly was a physical fight before
24 Mr. Scurlock and the other individual fled.

25 The weight of the evidence and, of course, both as we

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1 will learn more about the evidence during discovery but the
2 weight of the evidence as proffered by the government also
3 appears to be strong. This consideration largely goes to risk
4 of flight but also tends to underscore the seriousness of the
5 offense. A firearm, specifically .25 caliber semi-automatic
6 Phoenix Arms pistol, was recovered from the scene along with
7 shell casings. Of course, from the firearm, DNA was recovered
8 from the firearm and, at least to some degree, there appears to
9 be a match with the defendant. Obviously the strength of that
10 match will be further developed as the parties review the
11 discovery and if there is any litigation on that issue.

12 Also, there is surveillance footage from the night of
13 the incident that the government represents shows the shooter
14 wearing a particular outfit, a blue hat with a red brim and
15 blue shorts with a red stripe that also later matched photos
16 recovered from the cellular phone that the government maintains
17 belonged to Mr. Scurlock. That phone also contained several
18 photos of the firearms that I mentioned.

19 I also note as to the history and characteristics of
20 the defendant that he has a troubling criminal history. While
21 the last conviction was almost a decade ago, felony convictions
22 were, again, troubling. On January 17, 2008, he pled guilty to
23 attempted robbery in the second degree, and then in April 2011
24 he pled guilty to grand larceny in the fourth degree.

25 In light of all these factors, I find that the

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1 government has met its burden and that there are no conditions
2 or combination of conditions of release that would reasonably
3 assure the safety of the community. But again, as I mentioned,
4 if further things develop and there is a future bail
5 application, that should come to me.

6 Ms. Chong, is there further application from the
7 government?

8 MS. CHONG: Yes, your Honor. We seek exclusion of
9 time under the Speedy Trial Act from today until the date of
10 the next status conference. I believe you set that for
11 September 13th. The exclusion is in the interest of justice as
12 it will allow for production of discovery to the defense, for
13 defense counsel to review the discovery, and for the government
14 and defense counsel to confirm about possible resolution.

15 THE COURT: Ms. Levine, have you had a chance to
16 discuss the Speedy trial Act with your client?

17 MS. LEVINE: No, your Honor. If I can have one
18 moment?

19 THE COURT: You may.

20 (Defendant and counsel conferring)

21 MS. LEVINE: Your Honor, we have no objection.

22 THE COURT: Let me also ask, Ms. Levine, if I were to
23 exclude time through September 17th, which is a Friday of that
24 week since we don't know what day our next conference will be,
25 does the defendant have any objection to that?

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1 MS. LEVINE: No. That's fine.

2 THE COURT: I will therefore exclude time from today
3 until September 17th, 2021, pursuant to Title 18, United States
4 Code, Section 3161(h)(7)(A). I find that the ends of justice
5 served by excluding such time outweigh the interests of the
6 public and defendant in a speedy trial and those are for the
7 reasons that Ms. Chong mentioned including to allow the
8 government to produce discovery to the defendant and for the
9 defendant and his attorney to do discovery and consider any
10 possible pretrial motions.

11 Are there any other matters that we need to address
12 this afternoon, Ms. Chong?

13 MS. CHONG: Nothing from the government, your Honor.

14 THE COURT: Ms. Levine?

15 MS. LEVINE: No. Not at this time, thank you.

16 THE COURT: The conference is adjourned. I will see
17 the party again the week of September 13th. I wish you all a
18 good rest of the day.

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